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C.M.A.Nos.1784 to 1796 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	07.02.2024
Pronounced on	16.02.2024

CORAM

THE HON'BLE MRS. JUSTICE K.GOVINDARAJAN THILAKAVADI

C.M.A.Nos.1784, 1785, 1786, 1787, 1788, 1789, 1790,

1791, 1792, 1793, 1794, 1795 and 1796 of 2021

C.M.A.No.1784 of 2012

Chandra

Versus

...Appellant

1. The Project Director,
National Highways Authority of India,
Project Implementation Unit,
Door No.212-3/D3-1, Sri Nagar Colony,
Narasothipatti, Salem – 636 004.

2. The Competent Authority and
Special District Revenue Officer (LA),
Room No.414, 4th Floor,
Collector's Office,
Salem.



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3. The Arbitration Cum District Collector,
Collector's Office, Villupuram.

... Respondents

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Prayer in C.M.A.No.1784 of 2021: This Civil Miscellaneous Appeal is filed under Section 37 (1) & (2) of Arbitration & Conciliation Act, 1996, to set aside the Fair and Decretal order made in Arbitration O.P.No.55 of 2019, dated 11.01.2021 on the file of the Principal District Judge, Villupuram.

For Appellant : Mr.C.Prakasan

(In all C.M.As.)

For R1 : Mr.Su.Srinivasan

For R2 and R3 : Mr.B.Ramilnidhi

Additional Government Pleader

(In all C.M.As.)

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed by the land owners/1st respondent in Arbitration O.P.Nos.55, 52, 38, 54, 49, 53, 68, 48, 51 of 2019, 146 of 2018, 57, 67 and 56 of 2019 respectively, assailing the impugned order passed by the Principal District Judge, Villupuram in the above applications and filed under Section 34 of the Arbitration and



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Conciliation Act, 1996.

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The facts that led to these appeals are as follows:

2. For the sake of convenience the parties are referred as described in the Arbitration Original Petitions.

3. The 2nd respondent herein/The Competent Authority and the Special District Revenue Officer(LA), who is originally 2nd respondent in the above Arbitration Original Petition, has been authorized by the Government of India to act as a Competent Authority for acquiring the lands required for the extension of National Highways-68, between the stretch of Salem to Ulundurpet under Section 3(a) of National Higways Act, 1956, he passed the awards in Award No.280/2009/N H-68 dated 31.08.2009 in respect of the acquisition of lands of an extent of 311, 415, 575, 146, 362, 741, 782, 166, 506, 492, 400, 405 and 366 sq.mts in S.F.Nos.35/1B, 27/20B and 39/1A, 40/7A, 40/8A, 40/9A and 40/14A, 40/12, 27/4D2, 27/8B, 35/6A, 29/3B and 4B, 5/3B1, 40/12A, 13A, 30/3A2, 3B1B, 40/17A, 15/5B, 17B and 27/9B2, 10B of Valavanthaan Kuppam, Village, Kallakurichi Taluk, Villupuram



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District from the appellants/land owners, for the said project. He has selected a data land to fix the land value for the acquisition of lands and accordingly, the value of the lands worked out to Rs.75,000/- per acre or Rs.1,85,250/- per Hec. or Rs.19/- per sq.mtr and accordingly, paid compensation to the land owners.

4. Aggrieved by the said, the land owners filed Arbitration Petitions before the Arbitrator cum District Judge, Villupuram under Section 3 G(5) of the National Highways Act, 1956, seeking enhancement of compensation for the acquired lands. However, the 3rd respondent/Arbitrator rejected the claim made by the appellants/land owners, against which, the appellants/land owners filed writ petitions in W.P.Nos.11945, 10001, 11940, 11943, 10002, 11944, 11939 and 10003 of 2018, W.P.No.40163 of 2016, W.P.Nos.11942, 9759 of 2018 before this Court, in which, the orders passed by the 3rd respondent/Arbitrator were set aside and a direction was given to the 3rd respondent/Arbitrator to pass a fresh order after examining the records produced by the appellants/land owners, after affording due opportunities within three months.



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5. The 3rd respondent/Arbitrator in compliance with the direction of this Court, issued notice to the appellants/land owners for a fresh enquiry on 31.08.2018. After enquiry, the 3rd respondent passed the Arbitral Awards enhancing the land value at Rs.322/- per Sq.mtr in accordance with the documents produced by the appellants/land owners.

6. Aggrieved by the same, the 1st respondent/NHAI filed the above Arbitration O.Ps under Section 34(2) of the Arbitration and Conciliation Act, 1996, before the Principal District Judge, Villupuram to set aside the order of the 3rd respondent/Arbitrator

7. The Principal District Judge, Villupuram has set aside the Arbitration Awards in A.P.No.B2/23409/2018 dated 20.11.2018, A.P.No.B2/23418/2018 dated 29.11.2018, A.P.No.B2/23407/2018 dated 15.11.2018, A.P.No.B2/23413/2018 dated 29.11.2018, A.P.No.B2/23417/2018 dated 29.11.2018, A.P.No.B2/23416/2018 dated 22.11.2018, A.P.No.82/11767/2015 dated 05.12.2018,



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A.P.No.B2/23408/2018 dated 29.11.2018, A.P.No.B2/23415/2018 dated

29.11.2018, A.P.No.B1/30977/2017 dated 01.06.2018,

A.P.No.B2/23406/2018 dated 29.11.2018 and Roc.(Arbit) A2/29623/2015 dated 05.12.2018 of the 3rd respondent/Arbitrator in the above A.O.Ps dated 11.01.2021 on the ground that no opportunity was given to the 1st respondent/NHAI to put forth its case and to defend, as the 1st respondent/NHAI was not added as a party in the Arbitral Proceedings and no notice was given, which is against the principles of natural justice.

8. Aggrieved by the said order, the land owners are on appeal. Mr.C.Prakasam, the learned counsel appearing for the appellants/land owners would submit that, the 2nd respondent/Competent Authority without considering the existing market value, fixed the compensation at Rs.19/- per Sq.mtr., whereas, for the very adjacent land, the 2nd respondent/Competent Authority fixed the compensation at the rate of Rs.322/- per sq.mtr., under the provisions of National Highways Act on 31.08.2009. Aggrieved by this, the appellants/land owners approached the 3rd respondent/Arbitrator and filed Arbitration Petitions under Section 3 G(5) of the National Highways



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Act, 1956 seeking enhancement of compensation and the same were rejected.

9. Thereafter, as per the direction of this Court in the writ proceedings, filed by the appellants/land owners, the 3rd respondent/Arbitrator, made a fresh enquiry and upon perusing the materials on records, fixed the land value at the rate of Rs.322 per sq.mtr., against which the 1st respondent/NHAI preferred Arbitration O.Ps before the Principal District Court, Villupuram.

10. The learned Principal District Judge without considering the fact that nothing prevented the 1st respondent/NHAI to implead themselves in the arbitral proceedings, while the 1st respondent/NHAI was a party in the writ proceedings, erroneously allowed the above Arbitration Petitions by setting aside the awards passed by the 3rd respondent/Arbitrator.

11. Even in the writ orders, this Court nowhere stated that opportunity to be given or notice should be issued to the 1st respondent herein. It is



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further submitted that the 1st respondent/NHAI neither preferred any appeal nor initiated arbitration proceedings before the 3rd respondent/Arbitrator against the awards passed by the 2nd respondent/Competent Authority in favour of 27 land owners, whose lands were acquired and compensation were fixed at Rs.322/- per sq.mtr. The said awards became final and the 1st respondent/NHAI did not challenge the same and in fact, the 1st respondent/NHAI disbursed the compensation amount at the rate of Rs.322/- per.sp.mtr. to the above said land owners. Hence, the orders passed by the learned Principal District Judge, Villupuram are liable to be set aside.

12. On the other hand, the learned counsel appearing for the 1st respondent/NHAI would contend that the awards passed by the 3rd respondent/Arbitrator enhancing the compensation at Rs.322/- per sq.mtr., as against Rs.19/- per Sq.mtr., based on the documents produced by the land owners, are not in consonance with the envisaged procedures adumbrated in the National Highways Act, 1956 for determination of land value. Without giving notice to the 1st respondent/NHAI, the 3rd respondent/Arbitrator enhanced the compensation amount, which falls under the definition of



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principles of natural justice and violation of public policy. It is further submitted since the 1st respondent/NHAI is the main stake holder, who was not at all a party in the arbitral proceedings, the award passed by the 3rd respondent/Arbitrator would not bind on the 1st respondent/NHAI.

13. The learned counsel would submit that as per Section 34 (2) of the Act, an arbitral award may be set aside, if the party making the application furnishes proof that the he was not given proper notice of the appointment of an Arbitrator or of the arbitral proceedings or was otherwise unable to present their case. Hence, the learned Principal District Judge, Villupuram has rightly set aside the Arbitral Award passed by the 3rd respondent/Arbitrator on the ground that the 3rd respondent/Arbitrator failed to follow the procedures as envisaged under law and also not adhered to the principles of natural justice, which calls for any interference. To support his contention, he has relied upon the following cases:

1. 2011 SSC Online Mad 2329
2. C.M.A.No.2763 of 2023 dated 15.12.2023



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14. Heard both sides. Records perused.

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15. Admittedly, the Special District Revenue Officer (LA)/2nd respondent herein acquired land from the appellants/land owners and passed an award in Award No.280/2019 (NH 68) dated 31.08.2009 by fixing Rs.19/- per Sq.mtr., as land value. Aggrieved by the quantum of compensation fixed by the Competent Authority, the appellants/land owners raised a dispute and the same was referred for arbitration under Section 3 G (5) of the Act, seeking enhanced compensation. The 3rd respondent/Arbitrator passed arbitral awards by enhancing the land value at the rate of Rs.322/- per sq.mtr. It is also not in dispute that the 1st respondent/NHAI was not added as a party in the said arbitral proceedings. Therefore, no opportunity was given to the 1st respondent/NHAI to file pleadings or to lead evidence before passing the impugned award in the O.P. The valuable rights of the 1st respondent/NHAI is defeated. The 3rd respondent/Arbitrator failed to follow the procedures envisaged under law, which is against the principles of natural justice. Since the 1st respondent/NHAI fulfilled the grounds as contemplated under Section 34



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(2)(a)(III) of the Arbitration and Conciliation Act, 1996 for setting aside the awards, the learned Principal District Judge has rightly set aside the award passed by the 3rd respondent/Arbitrator which call for any interference.

16. In the result, these Civil Miscellaneous Appeals are dismissed. No Costs.

16.02.2024

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Index:Yes/No
Speaking Order : Yes/No

To

1.The Principal District Judge, Villupuram.



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K.GOVINDARAJAN THILAKAVADI,J.

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PRE- DELIVERY JUDGEMENT MADE IN

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